

NO. 18791

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

N

O.

STERLING EDWARD NEWCOMB,

1 Appellant,

8 vs.

7 UNITED STATES OF AMERICA,

9 Appellee.

1

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PETITION FOR REHEARING  
BY STERLING EDWARD NEWCOMB

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**FILED**

MAR - 5 1964

RUSSELL E. PARSONS  
306 West Third Street  
Los Angeles, California  
MAdison 6-9167  
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FRANK H. SCHMID, CLERK



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TO THE HONORABLE JUDGES OF THE  
ABOVE-ENTITLED COURT:



COMES NOW the appellant STERLING EDWARD NEWCOMB and respectfully petitions the above-entitled court for a rehearing as to him, and urges:

I

THE EVIDENCE (CONTRABAND) WAS RECEIVED IN EVIDENCE OVER OBJECTION AND WAS OBTAINED AS A RESULT OF AN UNLAWFUL SEARCH AND SEIZURE AND NOT INCIDENT TO A VALID ARREST.

A. Subsidiary to this is the finding by both the trial court and this court that the evidence or information in possession of the officers at the time of the arrest and the search was sufficient. With all due deference to the court, the evidence in possession of the officers at the time, and summarized in the margin of this court's opinion, was not enough to outweigh the protection afforded by the Fourth and Fifth Amendments to the federal constitution.

There was no warrant of arrest and no search warrant.





B. Lacking a warrant of arrest and search warrant, the officer apparently in charge of the case was actually attempting to contact the United States Attorney about obtaining a search warrant - when the other officers, we contend, without reasonable cause therefor "jumped the gun" and made the arrest of appellant, your petitioner. No one was fleeing the scene, nor was there any basis for belief on the part of the officers that any evidence was to be or was being destroyed.

C. Further subsidiary to the question is the fact that "The government agrees that this man (informant) does not have any prior or previous reliability as far as the government is concerned." (R. T. p. 43, ll. 13 - 15.)

D. Further subsidiary to the question is the proposition that the informant was not known to be reliable. A reliable informant means a person whose information has in the past led the police to valid suspects. Such is not the case here. And in view of what the officers knew at the time of the arrest and search, it may be said it is only in the case of a pressing emergency that an arrest or search



without a warrant may be justified based upon information secured from an informant or from an informant not known to the officer to be reliable.

E. In connection with this, may we point out that the appellant was entitled to know, by way of cross examination (which is recognized as one of the most powerful weapons in the possession of a defendant), what information the informant had, who he was, upon what did he base his statements that "counterfeiting" was going on at a certain location and was being conducted by the appellant and others. They had a right to know who he was, and whether or not he was actually a participant, and what consideration had been given to him. This was denied to the appellant; and this, we respectfully urge, was serious error which should be given further consideration by this court.



## CONCLUSION

The appellant respectfully asserts that this appears to be a case where both the trial court and this court have put the stamp of approval upon the proposition long since outlawed: "Did they have the evidence, " NOT "How did they get it." And we again respectfully assert that it appears to us that both the trial court and this court have overlooked the proposition: "A search is not to be made legal by what it turns up." The appeal to necessity is not justified in this case.

U. S. v. Dire, 332 U. S. 581 - 594.

In asking for a rehearing, may we suggest that the basic constitutional question of search and seizure and the application of the Fourth and Fifth Amendments would warrant this case being referred to the court for hearing en bank.

We respectfully ask for a rehearing.

Respectfully submitted,

RUSSELL E. PARSONS

Attorney for Appellant,  
Petitioner Herein  
Sterling Edward Newcomb.



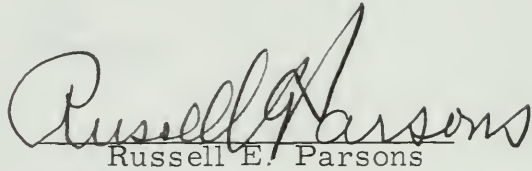
CERTIFICATE OF COUNSEL

STATE OF CALIFORNIA            )  
  ) ss.  
County of Los Angeles         )

I, RUSSELL E. PARSONS, attorney for the Appellant NEWCOMB, do hereby certify that, in my opinion, the Petition for Rehearing is well founded, and that it is not interposed for delay.

I further certify that I have been asked to file this petition by the appellant and his attorney of record Paul Augustine.

DATED at Los Angeles, California, this 4th day of March, 1964.

  
\_\_\_\_\_  
Russell E. Parsons





STATE OF CALIFORNIA                    )  
  ) ss.  
County of Los Angeles                 )

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding; that

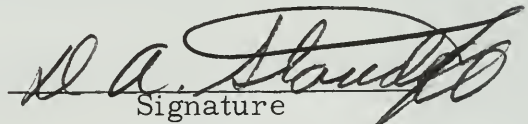
My business address is 215 West Fifth Street, Los Angeles 13, California, that on March 4, 1964, I served the within PETITION FOR REHEARING BY STERLING EDWARD NEWCOMB on the following named parties by depositing the designated copies thereof, inclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Los Angeles, California, addressed to said parties at the addresses as follows:

UNITED STATES ATTORNEY  
Sixth Floor, Federal Building  
Los Angeles, California  
(3 copies)

FRANK H. SCHMID, ESQ.  
Clerk, U. S. Court of Appeals  
For the Ninth Circuit  
Post Office Box 547  
San Francisco, California  
(Orig. & 20 copies)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 4, 1964, at Los Angeles, California.

  
Signature

**DEAN - STANDEFER**  
MULTI-COPY SERVICE

